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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
MACARTHUR, VICTOR L	
ART UNIT	**PAPER NUMBER**
3679	

DATE MAILED: 02/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/632,778	TERRELS ET AL.	
	Examiner	Art Unit	
	Victor MacArthur	3679	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *03 November 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-11 and 15-24* is/are pending in the application.

4a) Of the above claim(s) *15-20 and 24* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-11,21-23* is/are rejected.

7)☒ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *06/02/2005*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of Group I, claims 1-11 and 21-23, in the reply filed on 11/03/2005 is acknowledged. The traversal is on the grounds that the combination as recited in claim 23 requires certain details of the subcombination as recited in claim 15. This is not persuasive. Even though claim 23 recites some structure present in claim 15, claim 23 does not require **all** of the particulars of claim 15 (i.e., each spring sheet having a fixed end connected substantially adjacent to the socket end and a cantilevered portion extending from the fixed end toward the mounting end of the bracket" as recited in lines 5-7 of claim 15). Therefore, the combination does not require the subcombination and restriction is proper. See MPEP section 806.05(c)II.

The requirement is still deemed proper and is therefore made FINAL.

Claims 15-20 and 24 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 2/8/2005.

Claim Objections

Claim 21 is objected to because of the following informalities:

- The limitation "the rectangular frame" (line 6 of claim 21) lacks proper antecedent basis and should be replaced with --the frame--.

Appropriate correction is required. For purposes of examining the instant invention, the examiner has assumed these corrections have been made.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 2, 4-6 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kupiec (U.S. Patent 5,335,471) in view of Erwin (U.S. Patent 6,601,831).

Claim 1. Kupiec discloses (figs.3-5) a post (10) but does not expressly state that the post is used in a post and railing assembly. Erwin teaches (figs.1 and 3) that it is old and well known in the art to mount rails and pickets on posts using brackets to create a post and rail assembly (or fence) which is beneficial for preventing people from falling off of decks and/or creating boundaries for foliage displays and garden areas (col.1, ll.15-26) in an aesthetically pleasing manner (col.3, ll.25-30). Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify the Kupiec post to be mounted with rails and pickets using brackets, as taught by Erwin, for the purpose of increasing safety around decks and/or creating garden boundaries while improving aesthetics. The Kupiec/Erwin combination would necessarily result in a post and railing assembly comprising: a core (Kupiec, 11); a rectangular frame (Kupiec, 12) surrounding the core; a rectangular shell (Kupiec, 29-32) having an inner surface (inner surface of Kupiec, 29-32) and an outer surface (outer surface of Kupiec,

29-32), said shell having a top end (top end of Kupiec, 29-32), a bottom end (bottom end of Kupiec, 29-32) and a side face (side face of Kupiec, 29-32) extending between the top end and bottom end, said inner surface engaging the rectangular frame; a railing (Erwin, 16) comprising a railing end (end of Erwin, 16), said railing end coupling with the side face of the outer surface of the shell (in a manner similar to Fig.3 of Erwin); and a bracket (100) on the side face of the shell, said bracket forming a socket (hollow portion of 100), said railing end extending into said socket to secure said railing end to the side face of the shell (in a manner similar to Fig.3 of Erwin).

Claim 2. Kupiec as modified by Erwin above necessarily requires that the frame comprises two frame halves (Kupiec, 14, 15) each having a semicircular inner face (Kupiec, semicircular inner faces of 14, 15), a generally rectangular outer face (Kupiec, rectangular outer face of 14, 15) and one or more frame fasteners (27) that connect the frame halves together in a clamped arrangement around the core, said semicircular inner faces adjoining one another in the clamped arrangement to form a cylindrical surface (Kupiec, cylindrical surface of 14,15) that frictionally engages the core (as seen in Kupiec, fig.5), said rectangular outer faces forming a continuous outer skirt (in as much as the applicant's invention does) that engages the inner surface of the shell.

Claim 4. Kupiec as modified by Erwin above necessarily requires that the bracket comprises a plurality of resilient flexible spring sheets (Erwin, fig.4A, 111, 112) in the socket, said spring sheets being biased inwardly and configured to impart inward pressure on the railing end when the railing is inserted in the socket.

Claim 5. Kupiec as modified by Erwin above necessarily requires that the bracket comprises a cylindrical hole (Erwin, hole in 101) that extends through the bracket, said hole

being **adapted** (in that it is a hole fully capable of fastener reception) to receive a bracket fastener that extends through the hole and the shell and into said frame to secure the bracket on the core against the outer face of the shell (emphasis added). Note that the limitation "adapted to receive" requires only the capability of reception and does not necessarily require positive reception. However, even if "adapted to receive" were taken to mean --receiving--, the examiner notes that the frame (Kupiec, 12) is fastened to the shell (at Kupiec, 30) by a fastener (Kupiec, 33) and that the bracket (Erwin, 100) would have to also be fastened to the shell (at Kupiec, 30) via the hole (Erwin, hole in 101) by a fastener (col.6, ll.10-15). Furthermore, one of ordinary skill would recognize that installing fasteners that extend through all of the bracket, frame and shell, rather than using separate fasteners to attach the frame and bracket to the shell would reduce the total number of fasteners required and thus reduce the cost and weight of the total assembly. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to install fasteners that extend through the bracket, frame and shell, for the purpose of reducing cost and weight.

Claim 6. The bracket fastener (e.g. any fastener capable of performing as functionally claimed in claim 5) can be chosen such that it is configured (e.g. being long) to interconnect the frame, shell and bracket with said core. Note that the bracket fastener is initially recited in claim 5 as a functional element rather than positively recited. Accordingly, claim 6 is not taken in combination. Further note that if the functional claim 5 limitation "adapted to receive" were taken to mean --receiving--, it would be obvious to use a fastener that interconnects the frame shell and bracket with the core (as detailed in the rejection of claim 5 above).

Claim 11. Kupiec discloses (figs.3-5) a post (10) but does not expressly state that the post is used in a post and railing assembly. Erwin teaches (figs.1 and 3) that it is old and well known in the art to mount rails and pickets on posts using brackets to create a post and rail assembly (or fence) which is beneficial for preventing people from falling off of decks and/or creating boundaries for foliage displays and garden areas (col.1, ll.15-26) in an aesthetically pleasing manner (col.3, ll.25-30). Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify the Kupiec post to be mounted with rails and pickets using brackets, as taught by Erwin, for the purpose of increasing safety around decks and/or creating garden boundaries while improving aesthetics. The Kupiec/Erwin combination would necessarily result in a post and railing assembly comprising a core (11); a rectangular frame (12) surrounding the core; a rectangular shell (29-32) having an inner surface and an outer surface, said shell having a top end, a bottom end and a side face extending between the top end and bottom end, said inner surface engaging the rectangular frame; and a railing (Erwin, 16) comprising a railing end (Erwin, end of 16), said railing end coupled with the side face of the rectangular shell. Furthermore, it would have been obvious to arrange the frame to providing vertical support for said railing end as follows: the frame (Kupiec, 12) is fastened to the shell (at Kupiec, 30) by a fastener (Kupiec, 33) and the bracket (Erwin, 100) would have to also be fastened to the shell (at Kupiec, 30) via the hole (Erwin, hole in 101) by a fastener (col.6, ll.10-15). One of ordinary skill would recognize that installing fasteners that extend through all of the bracket, frame and shell (such that the frame provides vertical support for the railing end via the bracket and fastener), rather than using separate fasteners to attach the frame and bracket to the shell would reduce the total number of fasteners required and thus reduce the cost and

weight of the total assembly. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to install fasteners that extend through the bracket, frame and shell, for the purpose of reducing cost and weight.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kupiec (U.S. Patent 5,335,471) in view of Erwin (U.S. Patent 6,601,831), as applied to claim 1 above and further in view of Erwin (U.S. Patent 6,471,192).

Claim 3. Kupiec as modified by Erwin 831' above suggests that the post and rail assembly should be made of plastic (Erwin 831', col.1, ll.40-46) but does not expressly state rigid polyvinylchloride. Erwin 192' teaches (col.4, ll.65-67) that rigid polyvinyl chloride (PVC) is preferable for railing components. One of ordinary skill in the art at the time the invention was made would have known that PVC is relatively low in cost, light weight and durable. It has generally been recognized that selection of a known material based upon its suitability for the intended use is a design consideration within the skill of the art. In re Leshin, 227 F.2d 197, 125 USPQ 416 (CCPA 1960). Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to use PVC material, as taught by Erwin 192', to construct the plastic shell, frames and brackets, since PVC is preferable due to its low cost, light weight and durability and since such practice is a design consideration within the skill of the art.

Claims 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kupiec (U.S. Patent 5,335,471) in view of Erwin (U.S. Patent 6,601,831), as applied to claim 5 above and further in view of Denman (U.S. Patent 5,827,029).

Claim 7. Kupiec as modified by Erwin does not disclose covers for the fattener receiving holes. Denman teaches (fig.1) a generally cylindrical cover (20) configured for insertion into a hole (30) and having a resiliently flexible side wall (38) and an end wall (21), said side wall having a diameter when separated from the hole that is slightly larger than the diameter of the hole and a longitudinal slot (44) extending though the side wall of the cover, said side wall further being inwardly flexible to permit the cover to be inserted into the hole to enclose a fastener (10), said cover being inserted into the hole in a compressed condition in which the side wall is biased outwardly into frictional engagement with the interior wall of the hole. Denman states that such covers should be used with fasteners to prevent a small child from unscrewing the fasteners. Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to further modify the Kupiec/Erwin combination such that the hole used a cover, as taught by Denman, for the purpose of preventing a small child from unscrewing the fastener from therein.

Claim 8. Kupiec as modified by Erwin and Denman necessarily requires that the bracket has an exterior contour (exterior contour of Erwin, 100), and the end wall (Denman, end wall of 20) of the cover has an exterior face that conforms to the exterior contour of the brackets surrounding the hole (in that they are both circular).

Claim 9. Denman teaches that a hole should comprise an interior wall (interior of 33) and a tongue projection (32) extending along the interior wall, said tongue projection configured to mate with said longitudinal slot when the cover is inserted in the hole to limit rotational displacement (via friction) of the cover relative to the interior wall of the hole. It would have been obvious to one of ordinary skill in the art at the time the invention was made to further

modify Kupiec/Erwin combination such that the hole has the Denman structure since such construction is required to properly receive the cover (motivation to include the Denman cover is detailed in the rejection of claim 7 above).

Claim 10. Denman teaches that the hole (30) comprises an interior wall (interior wall of 30) and an aperture (33) extending through the interior wall, said cover comprising a resilient flexible spring tab (38) having a tapered face (face of 38) that slidably engages the interior wall of the hole as the cover is inserted into the hole, said spring tab being configured to flex inwardly in a biased condition during insertion into the hole and snap outwardly when the spring tab is aligned with the aperture in the interior wall of the hole. It would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify Kupiec/Erwin combination such that the hole has the Denman structure since such construction is required to properly receive the cover (motivation to include the Denman cover is detailed in the rejection of claim 7 above).

Claims 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kupiec (U.S. Patent 5,335,471) in view of Erwin (U.S. Patent 6,601,831 and Elasser (U.S. Patent 6,467,756).

Claim 21. Kupiec discloses (figs.3-5) a post (10) but does not expressly state that the post is used in a post and railing assembly. Erwin teaches (figs.1 and 3) that it is old and well known in the art to mount rails and pickets on posts using brackets to create a post and rail assembly (or fence) which is beneficial for preventing people from falling off of decks and/or creating boundaries for foliage displays and garden areas (col.1, ll.15-26) in an aesthetically

pleasing manner (col.3, ll.25-30). Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify the Kupiec post to be mounted with rails and pickets using brackets, as taught by Erwin, for the purpose of increasing safety around decks and/or creating garden boundaries while improving aesthetics. The Kupiec/Erwin combination would necessarily result in a post and railing assembly comprising: a core (Kupiec, 11); a frame (Kupiec, 12) surrounding the core, said frame comprising a center section (Kupiec, center portion of 12 receiving 11); a rectangular shell (Kupiec, 29-32) having an inner surface and an outer surface, said inner surface being configured for engagement with the frame; a railing (Erwin, 16) comprising a railing end (Erwin, end of 16), said railing end coupled with the outer surface of the rectangular shell; and a bracket ((Erwin, 100) on the outer surface of the shell, said bracket forming a socket (Erwin, inner socket portion of 100), said railing end extending into said socket to secure said railing to the shell. The Kupiec/Erwin combination does not suggest that the frame (Kupiec, 12) has a plurality of support fins. Elsasser teaches (figs.1 and 2) that frames (Elasser, 16) should not be shaped as a solid block but rather should comprise a tubular center section (Elasser, tubular portion of 16) and a plurality of support fins (Elasser, 16b) extending radially outwardly from the tubular center section such that the support fins engage with an inner surface of a rectangular shell (Elasser, inner surface of 15). Elasser states that such construction is highly desirable since it allows for minor inconsistencies with internal measurements of different posts and always ensures a firm fit with no play (col.4, ll.57-61). Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to further modify the Kupiec post to use frames with fins, as taught by

Elasser, for the purpose of ensuring a firm fit regardless of minor inconsistencies between different posts.

Claim 22. Kupiec as modified by Erwin and Elasser above necessarily requires a plurality of corner flanges (Elasser, 17) extending outwardly from the support fins, said corner flanges being configured to engage the inner surface of the rectangular shell.

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kupiec (U.S. Patent 5,335,471) in view of Erwin (U.S. Patent 6,601,831, as applied to claim 1 above, and further in view of West (U.S. Patent 5,873,671).

Claim 23. Kupiec as modified by Erwin in the rejection of claim 1 above does not suggest displacement of spring sheets outwardly. West teaches (figs.3-4B) that a bracket (150) should comprise a plurality of resilient flexible spring sheets (164) in the socket (socket of 164), and a railing (22) extending through said spring sheets and displacing said spring sheets outwardly relative to the longitudinal axis of the socket, said spring sheets being biased inwardly toward the longitudinal axis of the socket and imparting inward pressure on the railing. West states that such spring sheet arrangement is highly desirable for allowing for the best possible fit of the rail and optimal placement of any gaps below the rail (col.6, ll.48-53). Therefore it would have been obvious to one with ordinary skill in the art at the time the invention was made to further modify the Kupiec/Erwin combination to have a bracket with spring sheets that are displaced outwardly, as taught by West, for the purpose of improving rail fit.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new grounds of rejection.

Conclusion

Applicant's amendment (i.e., the newly added limitation "said railing end extending into said socket" in lines 9-10 of claim1) necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor MacArthur whose telephone number is (571) 272-7085. The examiner can normally be reached on 8:30am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (571) 272-7087. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197.

VLM
January 26, 2006

Daniel P Stodola

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